

BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE

In the matter of the appeal of
Identification Technician
MARK VASQUEZ

SUMMARY OF PROCEEDINGS,
FINDINGS OF FACT
AND DECISION

MPD Personnel Order Number 2007-163

SUMMARY OF PROCEEDINGS

This appeal was held on February 13, 2008 and February 20, 2008 before Commissioners Woody Welch, Richard Cox and Ernesto Baca with Steven Fronk acting as Hearing Examiner on behalf of the Board. Appellant Mark Vasquez appeared in person and by Attorney John Fuchs. Former Chief of Police Nannette Hegerty appeared by Assistant City Attorney Heidi Galvan and Acting Captain Kurt Leibold. The appeal was from Personnel Order No. 2007-163 discharging Identification Technician Mark Vasquez for violating Milwaukee Police Department Rule 4, Section 2/040.00 by failing to reside in the City of Milwaukee.

Prior to taking testimony the appellant moved to dismiss the proceedings claiming that pursuant to City Charter 5-02 only the Fire and Police Commission had the authority to determine the residence of a police department employee and the responsibility to administer, interpret and enforce the Charter section concerning residency. The motion was denied. A second motion by Appellant to bar the admission of mortgage banking records was also denied.

Testimony of Identification Technician Mark Vasquez: I.D. Technician Mark Vasquez, prior to mid-year 2005, owned a home in Milwaukee and lived with his wife and children. According to his testimony, it was some time in 2004 when he and his wife made a "family decision" to build a home in Mukwonago, Wisconsin, where his wife and daughters would reside. They made joint decisions regarding the design and

construction of the home in Mukwonago and, in July 2005, Margaret Vasquez and the children moved to the Mukwonago home while Mark Vasquez began renting an apartment in the City of Milwaukee. The Mukwonago property is a five bedroom, 3 ½ bathroom single family residence with a three car garage. The Milwaukee property is the upper portion of a duplex consisting of a two bedroom, one bathroom apartment. I.D. Technician Vasquez rents the property in Milwaukee for \$565 per month plus utilities and also contributes a portion of his income toward the mortgage and expenses on the Mukwonago property. I.D. Technician Vasquez testified that he keeps essentially all of his clothing and personal property at the Milwaukee apartment, but that when he retires he will probably join his wife and family and reside in Mukwonago if that is where they still reside. Family gatherings are held at the Mukwonago property, not at the Milwaukee apartment. Mark Vasquez votes in Milwaukee, receives some of his mail in Milwaukee, obtained a fishing license using the Milwaukee address and has his personal automobile registered and insured using the Milwaukee apartment's address.

I.D. Technician Vasquez kept a logbook, a portion of which he submitted as Exhibit 11, listing time he spent at the Milwaukee apartment during a month-long period in July and August 2005. Assuming that the exhibit is accurate and portrays "normal" weeks, it would appear that on 4 out of 5 nights prior to work days he slept at the Milwaukee apartment and went to work the next morning from that location. He left work each day and either stopped briefly at the Milwaukee apartment or drove directly to Mukwonago where he spent several hours with his wife and children. He then drove back to Milwaukee to sleep and repeat the routine once again. On his final work day of the week, Mark Vasquez would normally leave the Milwaukee apartment that morning to go to work and not return to the Milwaukee apartment until the night after his next work day, an absence of more than 3 ½ days.

Mark Vasquez spent essentially all of his leisure time with his family in Mukwonago or elsewhere, not in Milwaukee. He testified that he believes that his current living situation constitutes residency, that it was not his intention to hide the fact that his family lived elsewhere and that he had given Captain Diana Rowe the phone number of his wife's home in Mukwonago in the event that he needed to be reached in an emergency. Mark Vasquez sought advice from his union president on how to handle a situation where his family resided elsewhere, but he did not contact the Milwaukee Police Department, the Fire and Police Commission or the Department of Employee Relations for guidance in order to insure compliance.

Testimony of Police Sergeant Peter Mulock: Sergeant Mulock was the lead investigator in this case initiated as a result of an anonymous letter (Exhibit 6). Sergeant Mulock and those under his direction reviewed MPD personnel records and public real estate tax records regarding the two properties, conducted surveillance and interviewed neighbors at both properties. Mark Vasquez was interviewed and given a full opportunity to explain the situation and provide evidence that he did, in fact, reside in Milwaukee. A summary of the investigation (Exhibit 7) together with the transcript of the interview of I.D. Technician Vasquez was prepared and submitted to the head of the Professional Performance Division for review prior to charges being issued.

Deliberations: At the close of Sergeant Mulock's testimony the Department rested its case and Attorney Fuchs, on behalf of Appellant, moved to dismiss. The Board denied the motion and Appellant, without presenting further evidence, rested his case. The Board deliberated before issuing a unanimous decision that I.D. Technician Vasquez had violated MPD Rule 4, Section 2/060.00 by failing to reside in Milwaukee. The matter was adjourned to February 20, 2008, for hearing regarding disposition, and on that date additional testimony, evidence and argument were received. The Board decided unanimously that the only appropriate disposition was for I.D. Technician Mark Vasquez to be dismissed from the Milwaukee Police Department.

FINDINGS OF FACT

Violation of MPD Rule 4, Section 2/040.00 - Failure to Reside in City of Milwaukee

Based upon testimony and evidence received, as to that charge contained in Order No. 2007-163, the Board of Fire and Police Commissioners does hereby make the following findings of fact:

1. I.D. Technician Mark Vasquez, at all times pertinent hereto, was a member of the City of Milwaukee Police Department and bound by the rules, regulations and procedural requirements thereof.
2. I.D. Technician Vasquez could reasonably have been expected to have had knowledge of the probable consequences of his failure to reside in the City of Milwaukee. He has testified that he knew he could be discharged for failing to maintain his residence in the City of Milwaukee.
3. MPD Rule 4, Section 2/040.00 which requires Police Department members to reside in the City of Milwaukee is reasonable. Current law allows municipalities to require that employees reside within that municipality. All City of Milwaukee employees, including all Police Department employees, accept employment knowing that they are required to establish and maintain their bona fide residence in Milwaukee if they wish to remain employed by the City.
4. The effort to discover whether or not I.D. Technician Vasquez resided in the City of Milwaukee prior to issuing charges was reasonable, fair and objective. Records were reviewed, surveillance was conducted and several people were interviewed. Mark Vasquez was interviewed concerning the preliminary results of that investigation and given an opportunity to tell his side of the story. He was invited to supply additional information and documentation if he so desired and such information was considered by the investigators and the Chief.

5. Chief of Police Nannette Hegerty or those acting on her behalf did, in fact, discover substantial evidence that I.D. Technician Vasquez failed to reside in the City and thereby violated Rule 4, Section 2/040.00 as described in the complaint.
6. After examining available information and taking into consideration those factors outlined in the City's Dual Residency Policy Statement (Exhibit 4) and other evidence, former Chief of Police Nannette Hegerty correctly determined that the preponderance of the evidence indicated that I.D. Technician Mark Vasquez did not reside in Milwaukee.
7. Factor 1 of the City's Dual Residency Policy Statement asks "At which location does the employee's family reside and attend school?" The wife and children of Mark Vasquez reside in Mukwonago. The children attend Mukwonago schools.
8. Factor 2 of the City's Dual Residency Policy Statement asks "At which location does the employee keep his or her tangible personal property and effects?" Mark Vasquez stated in his interview with PPD that he keeps his personal property at the Milwaukee apartment including "books, my DVD movie collection, my CDs, my magazine collection, personal photographs, my clothes ... etc, etc, etc." and keeps only "a pair of shoes, pair of shorts, a shirt, and ... a bicycle" at the Mukwonago property. We have no testimony, photographs or other documentation that would further corroborate or rebut this statement.
9. Factor 3 of the City's Dual Residency Policy Statement asks "At which location does the employee receive his or her correspondence?" Mark Vasquez stated in his interview with PPD that at the Milwaukee apartment he receives "everything I should be receiving ... magazine subscriptions, department information...bank statements." We have no testimony or documentation that would further corroborate or rebut this statement.

10. Factor 4 of the City's Dual Residency Policy Statement asks "At which location does the employee spend his or her time?" Testimony and other evidence in this case clearly show that, when not at work or sleeping, Mark Vasquez spends the vast majority of his time at the home in Mukwonago. Exhibit 11 is a copy of a page in a logbook kept by Vasquez, and was submitted by Vasquez as an indication of the amount of time he spends at the Milwaukee apartment during a normal month. He leaves work each day, spends several hours in Mukwonago, returns to Milwaukee to sleep and work, then goes back to Mukwonago. On weekends and when he socializes with family and friends or celebrates special occasions and holidays, he does so at the home in Mukwonago, not at the Milwaukee apartment. It is apparent that, during a normal work week essentially all of Vasquez's waking hours that were not work-related were spent with and centered on the family and home in Mukwonago. On off-days Mark Vasquez was rarely in the City of Milwaukee for any purpose other than to briefly visit a friend or relative.
11. Factor 5 of the City's Dual Residency Policy Statement asks "Which location does the employee list for official documents?" I.D. Technician Vasquez lists the Milwaukee apartment as his address on Milwaukee Police Department documents, voter registration, driver's license, certificate of automobile insurance and fishing license. Utilities for both the Milwaukee apartment and the Mukwonago home are paid on-line. Mortgage and real estate tax documents would appear to indicate that Mark and Margaret Vasquez are the owners, borrowers and occupants of the Mukwonago property.
12. Factor 6 of the City's Dual Residency Policy Statement asks "Which location is more suitable in terms of aesthetics, habitability, comparative comfort, convenience and regular access?" Although we have little information regarding the interiors of the Milwaukee apartment or the Mukwonago home, we believe

that it is reasonable to assume that the 5 bedroom, 3 ½ bath home in Mukwonago is more suitable in terms of aesthetics, habitability and comparative comfort. As to convenience and regular access, the Milwaukee apartment is more convenient and accessible for Mark Vasquez only as it relates to his employment with the Milwaukee Police Department. The Mukwonago home is more convenient and accessible to essentially all other important aspects of his life.

13. Factor 7 of the City's Dual Residency Policy Statement asks "At which location is habitation fixed without any present intent to move?" The Mukwonago home was built by Mark and Margaret Vasquez after selling a house in Milwaukee, and the Mukwonago home is obviously the central focus of family activities. There is no indication whatsoever of any intent to move, now or in the future, from the Mukwonago location to Milwaukee, whereas Mark Vasquez has testified that when he retires he will move to the Mukwonago home. It is clear to all members of this Board panel that the home in Mukwonago is the location where habitation is fixed with no present intention to move.
14. Factor 8 of the City's Dual Residency Policy Statement asks "At which location is there an apparent intent to make a permanent domicile?" A determination regarding this factor is very similar to that regarding Factor 7 above. As indicated, Mark Vasquez has testified that he intends to move to the Mukwonago home when he is no longer required to reside in Milwaukee. This Board finds that the Milwaukee apartment is merely a temporary accommodation required as a result of his employment with the Police Department. Mukwonago, not Milwaukee, is where he intends to make his permanent domicile.
15. The City's Dual Residency Policy Statement also states that "In the event that one location is owned and the other is rented, some presumption of residency shall be applied to the owned property." The Mukwonago home was built and is owned by Mark and Margaret Vasquez. The Milwaukee apartment is rented by

Mark Vasquez. We have factored the presumption of owned property being more likely to indicate residence than rented property into our determination that the Milwaukee apartment is not the bona fide residence of Mark Vasquez.

16. In addition to those factors noted above, we find that I.D. Technician Mark Vasquez performs no maintenance, grass cutting or snow shoveling at the Milwaukee address and does not do his laundry in Milwaukee. He admits that he performs minor maintenance, cuts the grass, assists with snow shoveling and does his laundry at the Mukwonago address. He does not have a computer at the Milwaukee address, although he testified that he pays some of his bills online, obviously from a computer located elsewhere.
17. I.D. Technician Vasquez has testified that, despite any evidence to the contrary, he believed that he resided in Milwaukee in compliance with the City Charter ordinance and MPD rule. We do not find such an assertion credible in view of the evidence in this case, and do hereby find that Mark Vasquez has failed to maintain a bona fide residence in the City as required by Charter and MPD rule.
18. Chief of Police Nannette Hegerty has applied Rule 4, Section 2/040.00 fairly and without discrimination. Police Department members have been discharged from the Department for violating this rule in the past. We see no indication that the Chief intended to treat I.D. Technician Vasquez any differently than any other department member who was believed to be in violation of the rule.

DECISION

Black's law Dictionary defines residence as "...made up of fact and intention ..." and goes on to state that it "...implies something more than mere physical presence ... ". Working days and sleeping most nights in a location do not, in and of themselves, make that location one's residence. Residence is something more, as evidenced also by where a person spends leisure time, maintains valuable personal possessions and engages in the most important aspects of one's life. In the case of Mark Vasquez, those indicia are elsewhere. The time that Mark Vasquez has spent in Milwaukee since July 2005 does not, in the eyes of this Board, constitute maintaining a bona fide residence in Milwaukee.

I.D. Technician Vasquez made a conscious decision to sell his existing home in Milwaukee and invest in a substantial single family home in Mukwonago where his family lives full time. We do not believe that the hours that I.D. Technician Vasquez spent in the City equates to residency when his family, his single largest financial asset and essentially every other important aspect of his life centers around his home and family in Mukwonago, a suburb that he drove to daily and where he spent the greatest portion of his waking hours when not at work. The apartment which I.D. Technician Vasquez maintained in Milwaukee was, in our opinion, merely an adjunct to his job. By his own admission, that apartment was never utilized as a place to congregate with his friends or family or to celebrate birthdays and holidays. The central focus in the life of Mark Vasquez, the very pivot point around which he revolves, is in Mukwonago, not Milwaukee.

In reviewing all of these factors and the evidence that has been presented, we reach the unanimous conclusion that the actions taken by I.D. Technician Mark Vasquez in this case were not a good faith effort to maintain his bona fide residence in the City of Milwaukee as required, but were instead an attempt to spend enough time and leave enough "evidence" in the City to skirt the applicable Charter provision and MPD rule. Working in Milwaukee coupled with sleeping in Milwaukee on those nights immediately preceding a work day, does not constitute a bona fide residence absent other significant indicia of actually "living" with an intention to remain. Essentially all such indicia in this case point to Mukwonago, not Milwaukee.

Having reached the conclusion that Mark Vasquez has failed to maintain his residence in the City of Milwaukee as required, we are informed and believe that our only available alternative is to dismiss him from the Milwaukee Police Department. We do hereby so order.

Board of Fire and Police Commissioners
Of the City of Milwaukee

By


Richard Cox, Commissioner

4-3-08

Date


Woody Welch, Commissioner

4-3-08

Date


Ernesto Baca, Commissioner

04.03.2008

Date